

public affairs, and intergovernmental affairs.

(d) *The Office of Administration.* The Office of Administration is responsible for all normal personnel and financial management functions, including operation of the OFI management information system. In addition, this office provides contract management, procurement, internal audit, and security functions.

(e) *The Office of Policy Analysis.* The Office of Policy Analysis analyzes major policy and economic issues as they arise and provides program evaluations and special organization studies for the Federal Inspector. It also provides policy oversight and program assistance on socioeconomic impact issues.

(f) *The Office of Engineering Review.* The Office of Engineering Review reviews pipeline design and construction plans, quality assurance and control programs, change orders and requests, cost estimates, and provides both compliance guidance and technical advice and assistance for field inspections.

(g) *The Office of Environmental Review.* The Office of Environmental Review has functions which are similar to those of the Office of Engineering Review, except that this office focuses its attention on solving environmental problems. Although structurally separate, these two units work closely to ensure that both engineering and environmental considerations are addressed in a coordinated manner.

(h) *The Office of Audit and Cost Analysis.* The Office of Audit and Cost Analysis implements the incentive rate of return mechanism and conducts audits of the sponsors' records for purposes of rate base formation. It is also responsible for assuring that the project sponsors establish and maintain effective cost-control and other management systems. These activities enable the Federal Inspector to quickly determine the impact of major decisions on cost and scheduling and to anticipate any potential significant cost or schedule deviations on the part of the project sponsors.

(i) *The Office of Permits, Scheduling, and Compliance.* The Office of Permits, Scheduling, and Compliance tracks, expedites, and coordinates Federal permit issuance. It also monitors resource

requirements, generally oversees the regulatory process by working with and advising the field staff, provides guidance and criteria on the enforcement of terms and conditions, laws, and regulations and administers the joint surveillance and monitoring agreement.

(j) *Field Offices in Alaska, San Francisco, and Omaha.* Field Offices in Alaska, San Francisco, and Omaha are responsible for monitoring any preconstruction activities, serve as the "one window" for processing permit applications, and monitor all construction and initial operation activities for the Alaska, Western and Eastern legs of the project. The field offices also enforce laws, regulations, and the terms and conditions of all permits, grants, certificates, and notices-to-proceed.

#### § 1502.8 Offices and hours.

(a) Offices of the OFI are in the following locations:

(1) *Headquarters.* Room 2407, Post Office Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20044;

(2) *San Francisco.* Room 767, Matson Building, 215 Market Street, San Francisco, California 94105;

(3) *Irvine.* 1st Floor, 2302 Martin Drive, Irvine, California 92715;

(4) *Anchorage.* 605 West Fourth Avenue, Pouch 6619, Anchorage, Alaska 99502;

(5) *Fairbanks.* Suite 400, Central Office Building, 1001 Noble Street, Fairbanks, Alaska 99701; and

(6) *Omaha.* Suite 350, 11414 West Center Road, Omaha, Nebraska 68144.

(b) Business hours are from 8:30 a.m. to 5:00 p.m. in Washington, from 8:00 a.m. to 5 p.m. in Irvine, and from 7:30 a.m. to 4:00 p.m. in all other locations. Offices are open Monday through Friday, except for Federal holidays.

## PART 1504—GATHERING, HANDLING, AND DISCLOSING INFORMATION

### Subpart A—Procedures Governing OFI Information Requests, Subpoena Process, Judicial Enforcement, and Administrative Sanctions

Sec.  
1504.101 Scope.

## Office of Fed. Inspector

§ 1504.102

- 1504.102 General oversight—OFI requests for information.
- 1504.103 General oversight—informal sanctions.
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- 1504.105 General oversight—compliance orders.
- 1504.106 General oversight—judicial enforcement.
- 1504.107 Formal OFI proceedings—discovery.
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### Subpart B—Treatment of “Sensitive” and “Business” Information

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- 1504.202 Document categories.
- 1504.203 Factors governing designation of information as “sensitive”.
- 1504.204 Factors governing designation of information as “business”.
- 1504.205 Procedures to designate information as “sensitive”.
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- 1504.308 Responsibilities of Freedom of Information Officer.
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- 1504.310 Records of other federal agencies.
- 1504.311 Records obtained from the public; notice to the donor.
- 1504.312 Initial denial of a request.
- 1504.313 Appeal from an initial denial.
- 1504.314 Appeal determination.
- 1504.315 Contents of determination denying appeal.
- 1504.316 Time allowed for issuance of appeal determination.
- 1504.317 Exemption categories.
- 1504.318 Fees; payment; waiver.

AUTHORITY: 5 U.S.C. 552; secs. 7(a) (5) and 9 of ANGTA, 15 U.S.C. 719; and secs. 102 and 202 of Reorganization Plan No. 1 of 1979.

SOURCE: 46 FR 61228, Dec. 15, 1981, unless otherwise noted.

## Subpart A—Procedures Governing OFI Information Requests, Subpoena Process, Judicial Enforcement, and Administrative Sanctions

### § 1504.101 Scope.

(a) The Federal Inspector has expansive authority to collect information which “he deems necessary to carry out his responsibilities.” Section 7(a)(5)(D) of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. 719e(a)(5)(D). Absent voluntary submission, the Office of the Federal Inspector (OFI) may issue an administrative subpoena and, if necessary, pursue judicial enforcement of unsatisfied subpoenas.

(b) This subpart describes the procedures which will be used when voluntary OFI requests for information relevant to the general oversight functions of the OFI are not fulfilled. It also provides the procedures to be used during any formal OFI proceeding for issuing and enforcing administrative subpoenas.

### § 1504.102 General oversight—OFI requests for information.

(a) The OFI will exercise its jurisdiction mainly through general project oversight, not through *ad hoc* adjudication. As a result, most of the OFI’s requests for information should occur outside the confines of litigation.

(b) The OFI will make requests for information in writing, except when a written communication would result in an unacceptable delay, in which case any oral request will be confirmed in writing. Requests will provide an adequate description of the information requested and state a reasonable period of time, consistent with the mandate of ANGTA to expedite the regulatory process, within which the information should be submitted.

(c) When the request for information has not been satisfied, the OFI may take further action under either or both §§ 1504.103 and 1504.104.

**§ 1504.103 General oversight—informal sanctions.**

(a) If the request for needed information is not satisfied, as per § 1504.102(c), the OFI may—as an alternative to or in addition to issuing an administrative subpoena—withhold any regulatory approval or monitoring action to which the needed information relates.

(b) The director of the OFI office responsible for the specific regulatory approval or monitoring action and in need of the information withheld or the Deputy Federal Inspector where appropriate may, after consultation with the General Counsel, withhold such approval or action, as per § 1504.103(a).

(c) Delays associated with the OFI withholding approval or action, as per paragraph (a) of this section, will be attributed to the recalcitrant entity, to which the unsatisfied but valid information request had been made.

**§ 1504.104 General oversight—subpoenas.**

(a) *Justification.* If the request for needed information is not satisfied, as per § 1504.102(c), the OFI may issue a subpoena compelling production under this section.

(b) *Issuance.* Subpoenas for the production of information deemed necessary for the OFI to carry out its general oversight and monitoring responsibilities may be issued either by the Federal Inspector or by the OFI General Counsel or designee.

(c) *Contents.* Subpoenas will bear the OFI name and seal and the name and position of the issuing officer. Subpoenas will command the production of reasonably described information at a designated place and time, not to exceed 10 calendar days from date of service. The subpoena will contain the statutory basis for the request of the information and how the requested information is relevant to the execution of OFI's authority.

(d) *Service.* (1) A subpoena will be served upon the person(s) named in the subpoena by delivering a copy of the subpoena to the person(s) named.

(2) Delivery of the subpoena may be made by:

(i) Any legally-accepted method, or

(ii) Any other method that provides the person with actual notice prior to the return date of the subpoena.

(e) *Motion to quash.* A motion to quash a subpoena may be made no more than 5 calendar days from the date of service. Such motion shall be filed with the issuing officer and shall set forth specific reasons why the information requested is clearly not necessary for the OFI to carry out its duties. The issuing officer may deny or grant the motion in whole or part; stay or extend the time for compliance; or modify the subpoena as appropriate.

**§ 1504.105 General oversight—compliance orders.**

(a) When a subpoena issued pursuant to § 1504.104 has been neither quashed nor satisfied, the OFI may issue a compliance order, as per section 11(a)(1) of ANGTA, 15 U.S.C. 719i(a)(1). Either the Federal Inspector or the OFI General Counsel may issue such an order.

(b) Such compliance order will specify: (1) The subpoena violated; and (2) a time of compliance, not to exceed 10 calendar days.

**§ 1504.106 General oversight—judicial enforcement.**

In addition to pursuing remedies available under other applicable provisions of law, the OFI may, after the issuance and violation of a compliance order:

(a) Seek judicial enforcement of the unsatisfied subpoena;

(b) Commence a civil action pursuant to section 11(a)(2) of ANGTA, 15 U.S.C. 719i(a)(2), in the district court of the United States having venue for appropriate relief, including an injunction against or civil penalties (not to exceed \$25,000 per day) for, violating the compliance order; and/or

(c) Where appropriate, seek an order from the district court holding the defendant in contempt of court.

**§ 1504.107 Formal OFI proceedings—discovery.**

(a) To the extent that it undertakes an enforcement or other regulatory action which requires an agency hearing on the record or which otherwise could result in the imposition of serious

sanctions against the responding person, the OFI will gather the necessary information through interrogatories, document production, depositions, and other forms of discovery.

(b) The rules governing such discovery will appear as part of the OFI's rules of practice and procedure, 10 CFR part 1508.

(c) Unjustified refusal to comply with discovery requests may result in the OFI issuing a subpoena compelling compliance, as per § 1504.108.

**§ 1504.108 Formal OFI proceedings—subpoenas.**

(a) *Justification.* If the discovery request for information is refused, as per § 1504.107(c), if a requested witness refuses to appear, or if a party refuses to produce evidence, the OFI may issue a subpoena compelling discovery, attendance, or production under this section.

(b) *Issuance.* Subpoenas justified under § 1504.108(a) may be issued by the OFI presiding officer on his or her own motion or on a motion filed with the presiding officer by any party to the OFI proceeding. Subpoenas will be issued if the presiding officer finds that the information requested is necessary to the duties of the OFI and should not otherwise be withheld.

(c) *Contents.* Subpoenas will bear the OFI name and seal, the name and position of the issuing officer, and the title of the proceeding. Subpoenas will command a named person to testify or produce reasonably described evidence or information at a designated time and place. The subpoena will contain the statutory basis for the request of the information and how the requested information is relevant to the execution of OFI's authority.

(d) *Service.* Service will be accomplished in accordance with § 1504.104(d).

(e) *Motion to quash.* A motion to quash a subpoena may be made no more than 5 calendar days from the date of service. Such motion shall be filed with the OFI presiding officer who issued the subpoena (and where appropriate served on the party applying for the subpoena) and shall set forth specific reasons why the information requested is clearly not necessary for the OFI to carry out its duties, or should otherwise be withheld. The OFI presid-

ing officer may deny or grant the motion in whole or part; stay or extend the time for compliance; or modify the subpoena as appropriate.

**§ 1504.109 Formal OFI proceedings—compliance orders.**

When a subpoena issued pursuant to § 1504.108 has been neither quashed nor satisfied, the OFI may issue a compliance order in accordance with the procedures set forth in § 1504.105.

**§ 1504.110 Formal OFI proceedings—judicial enforcement.**

Judicial enforcement of a compliance order, issued under § 1504.109, may be sought in accordance with § 1504.106.

**Subpart B—Treatment of “Sensitive” and “Business” Information**

**§ 1504.201 General policy.**

(a) The OFI agrees in advance to resist disclosure of “sensitive” information, a narrow category including national security, trade secret, critical procurement, and secrecy agreement information.

(b) For “business” information, however, the OFI only agrees to the following: (1) To give to the submitter notice and opportunity to object; and (2) to balance the competing interests as to disclosure.

**§ 1504.202 Document categories.**

(a) The “sensitive” category is very narrow, only including documents which, except under court order, should in no case be distributed outside the government (and in most cases retained just within the OFI). The following types of information are “sensitive”:

(1) Documents classified for national security reasons are “sensitive”, the only contemplated examples of which relate to the reciprocal procurement review with the Northern Pipeline Agency in Canada.

(2) Trade secrets, as explained and defined in § 1504.203(b) for this particular context, also come within the “sensitive” category.

(3) Critical procurement information, particularly tentative bids, price and

vendor conditions, come within the “sensitive” designation.

(4) The “sensitive” category also includes information originally received by the submitter under a *bona fide* secrecy agreement from the third party originator of the information.

(5) There could possibly be other documents received under circumstances warranting limited or no distribution. Privileged information developed during non-ANGTS litigation, for example, might warrant an OFI agreement to resist disclosure. Privacy considerations might also be relevant here. Because “sensitive” designation of this type of information is presently only hypothetical, it will receive no elaboration in § 1504.203.

(b) The “business” category entails information either developed at a cost and possessing demonstrable market value or the release of which may substantially impair the competitive position of the person who supplied it, whether an ANGTS sponsor or another. This is basically proprietary information, disclosure of which would reduce or eliminate its value to the submitter. Unlike “sensitive” information, “business” information may, under certain circumstances, be disclosed to the public. The OFI will balance the economic impact of disclosure against the public interest in access.

**§ 1504.203 Factors governing designation of information as “sensitive”.**

(a) *National Security.* While relatively rare, the first type of “sensitive” information to be protected by the OFI is “classified” information. Through a formal U.S.-Canadian exchange of diplomatic notes establishing reciprocal procedures to administer procurement oversight, the OFI is required to maintain the “confidentiality” of certain information disclosed by the Northern Pipeline Agency. Such information would constitute “foreign government information” and as such would be classified as “confidential” under Executive Order 12065. During the limited period of the procurement process, while this information continues to be “confidential,” the OFI will deny public access under FOIA exemption (b)(1), that is, information properly classified under Executive Order as “in the inter-

est of national defense or foreign policy.” (See § 1504.317(a)(1) of subpart C of this part).

(b) *Trade Secrets.* Trade secrets are the core of the “sensitive” category:

(1) The ANGTS sponsors might have to contract for some highly specialized, technical, and secret process or mechanism instrumental to the design or construction effort.

(2) Public disclosure of the process itself—as contrasted to what was produced by use of the process—would cause the contractor severe economic and competitive loss. Disclosure of such trade secrets is not in the public interest, for it could both hamper project expedition and also escalate construction costs.

(3) The OFI will resist any FOIA request for such information, as well as discourage requests from other agencies or Congressional committees, unless adequate protections are provided. FOIA exemption b(4)—while broader than just trade secrets—will be employed. (See § 1504.317(a)(4) of subpart C of this part). So too, the Trade Secrets Act prohibition against unauthorized disclosure applies primarily to information like these trade secrets.

(4) While the term “trade secret” has varying connotations depending on the legal context, the OFI will use the following criteria to discern if information is a trade secret, solely for the purpose of bringing it within the “sensitive” category:

(i) The cost of developing the information;

(ii) The value of the information to the owner and competitor, *i.e.*, the extent of the competitive advantage it provides;

(iii) The extent to which the information is not independently known or available to others; and

(iv) The extent to which the owner has maintained its confidentiality.

(c) *Secrecy agreements.* The OFI will scrutinize information under secrecy agreements from a narrow perspective similar to that employed for trade secrets. These secrecy agreements could well be insisted upon by the trade secret owner contracting with the ANGTS sponsor. The OFI will closely review such secrecy agreements to assure that they are:

(1) Necessary, in terms of the sponsor being able to gain possession of the information on reasonable conditions;

(2) Enforceable against the submitter, *i.e.*, through civil damages; and

(3) Not formed to circumvent the OFI's regulations limiting special treatment for "sensitive" information.

(d) *Critical Procurement.* Critical procurement information will be protected through the FOIA (b)(4) exemption, and includes primarily tentative bids (price vendor, and conditions), disclosure of which before completion of the process could skew the procurement, leading to delay and/or cost escalation. Critical procurement information of the ANGTS sponsors will also retain the "sensitive" designation subsequent to the award of a contract.

**§ 1504.204 Factors governing designation of information as "business".**

(a) *Proprietary nature.* "Business" information is proprietary, commercial or financial information, the release of which may substantially impair the competitive position of the person who supplied it, whether an ANGTS sponsor or another. In the majority of cases, the ANGTS sponsor will incur substantial costs to develop or purchase numerous studies, plans, designs, methods, systems, etc., associated with project completion. While not "sensitive" information, these documents nonetheless possess some value; that is, the sponsors might at some time find a willing buyer for the information.

(b) *Treatment.* "Business" information generally comes within FOIA exemption b(4), but the OFI is not committed necessarily to resisting its public disclosure. Instead, the OFI will balance the economic harm of disclosure against the public interest supporting the access request. In so doing, the OFI will first notify the submitter of "business" information that a request for access has been made or that the OFI on its own initiative intends to disclose it, as detailed in § 1504.208. The submitter will then have the burden of proving to the OFI that the requested information is truly valuable and that disclosure will reduce or eliminate that value.

(c) *Factors against disclosure.* While OFI disclosure of such information would not, strictly speaking, impair competitive position, it might reduce or eliminate the potential for revenues from a future sale. Beside this general economic impact, the OFI will consider the following ANGTS-specific factors militating against disclosure:

(1) For "business" information merely held by an ANGTS sponsor but owned by a third party, such as procurement-related information of a prospective vendor or contractor, public disclosure might be shown to impair the sponsor's ability to procure future goods and services at a reasonable price.

(2) To the extent that "business" information is utilized by the sponsors for ANGTS construction, the associated costs will be capitalized for rate base inclusion. As such, the consumers of Alaskan gas will pay for such "business" information. The revenues from any subsequent sale of this "business" information should be used as a credit to rate base, thereby benefitting the gas consumer, who has been paying for such information. Therefore, when ruling on requests for public disclosure of the sponsors' "business" information, the OFI will consider, on the one hand, the likelihood and magnitude of future gas consumer rate reduction if access is denied and, on the other hand, the purpose to be served if access is granted.

(3) While the OFI's authority to gather information is expansive (see subpart A of this part), public disclosure of certain types of "business" information might increase submitter resistance and thereby increase the OFI's need to use compulsory rather than voluntary process for subsequent information gathering. This eventuality could impair the OFI's ability to expedite ANGTS construction, something which the OFI would try to avoid.

(d) *Factors favoring disclosure.* (1) Disclosure is the statutory preference under FOIA.

(2) For "business" information related to its overall role of administering the equal opportunity program for ANGTS preconstruction and construction (see 43 CFR part 34 and 10 CFR

part 1534), the OFI will accord the maximum public access permitted within relevant legal parameters, as described in this subpart.

**§ 1504.205 Procedures to designate information as “sensitive”.**

(a) Any person, who has been requested by the OFI to provide information, including computerized data, which that person believes to be “sensitive,” must so designate the information on its face and also submit, simultaneously with the information, a petition justifying that “sensitive” designation.

(b) A petition for “sensitive” designation must contain the following:

(1) A thorough statement (including documentary support and sworn affidavits if appropriate) explaining why the information is “sensitive,” pursuant to the criteria set forth in §§ 1504.202 and 1504.203;

(2) When appropriate, the length of time and the circumstances under which the information should remain designated “sensitive”; and

(3) The name and address by which the petitioner can promptly be reached by the OFI (through letter or telegram) concerning the petitioned-for designation.

(c) Upon receipt of the petition, the OFI General Counsel or designee will determine whether the information will be designated as “sensitive.”

(1) The General Counsel or designee will make this determination as soon after receipt of the petition as is practicable, but in the interim the petitioner may not assume that the petition has been approved.

(2) The General Counsel or designee will notify the petitioner of one of the three following determinations:

(i) The information is designated as “sensitive” and thus will be protected from public disclosure under all circumstances, as per § 1504.206;

(ii) The information is not designated as “sensitive,” in which case the petitioner may, where appropriate, consider petitioning the OFI for a “business” designation, as per § 1504.207; or

(iii) The petition is inadequate for making a final determination, in which case the petitioner will have five cal-

endar days from receipt of the determination in which to cure the petition.

**§ 1504.206 Treatment of “sensitive” information.**

(a) For information designated by the OFI as “sensitive,” under § 1504.205(c)(2)(A), the OFI will take the following internal steps:

(1) The designated information will be officially stamped on its face as “sensitive,” with the notations that public disclosure is prohibited; that the OFI General Counsel must first approve disclosure within the Government; and that internal distribution and copying is also prohibited unless approved by the OFI Security Officer. The “sensitive” designation will remain unless the General Counsel determines that changed circumstances make it necessary to remove such a designation, in which case the submitter will be so notified immediately.

(2) The OFI will impose stringent internal control procedures for the designated information, including special locked storage facilities, an assigned custodian, and a system of written logs to assure limitation on distribution and copying.

(b) When a request for public disclosure of the designated information is received, the OFI Freedom of Information Officer will so notify the original submitter of the “sensitive” information.

(c) Any information designated “sensitive,” which is released pursuant to either a joint federal/state agreement or any other arrangement, shall not be released to the public by the State or any other entity receiving it.

(d) To the extent that a state agency or any other respective entity does not agree in advance to § 1504.206(c), the OFI will not release such information to it.

(e) If the OFI subsequently encounters difficulties in resisting public disclosure of “sensitive” information, the OFI General Counsel or designee will so notify the original submitter, affording an opportunity for the submitter to take whatever supplemental legal action it deems appropriate to assist the OFI in resisting disclosure.

**§ 1504.207 Procedures to designate information as “business”.**

(a) Any person, who has been requested by the OFI to provide information, including computerized data, which that person believes to be “business,” must so designate the information on its face and also submit, simultaneously with the information, a petition justifying that “business” designation.

(b) A petition for “business” designation must contain the following:

(1) A concise statement explaining why the information is “business,” pursuant to the criteria set forth in § 1504.204 of this part, including particular analysis of the factors for and against disclosure;

(2) When appropriate, the length of time and the circumstances under which the information should remain designated “business”; and

(3) The name and address of a responsible person, who can speak for the petitioner and who can promptly be reached by the OFI (through letter or telegram) concerning the petitioned-for designation.

(c) Upon receipt of the petition, the OFI General Counsel will briefly review the matter and reject petitions which are patently inadequate. This brief review, however, does not constitute final action on the petition. Until the petition is formally considered (see § 1504.208 of this part) by the OFI, the petitioner may not assume that the petition has been approved.

**§ 1504.208 Treatment of “business” information.**

(a) For information petitioned to be designated as “business,” for which the petition has not been rejected as patently inadequate under § 1504.207(c), the OFI will stamp “‘business’ petition pending,” with the notation that public disclosure is not allowed without prior official OFI approval pursuant to this section, whether in the case of FOIA requests or disclosure at the OFI employee’s own initiative. Otherwise, the OFI will impose no special procedures for internal control.

(b) When a request for public disclosure of the information stamped “business” is received or when the OFI on its own initiative intends to make

public disclosure, the OFI Freedom of Information Officer will so notify the original submitter of the information, giving the submitter up to five days to supplement the original petition for “business” designation, first filed pursuant to § 1504.207(a). This supplementation may be accompanied by a sworn affidavit if appropriate and should include the following:

(1) Statement of any change in facts since the petition was first filed (including whether the petition has become unnecessary);

(2) Detailed explanation of the market value of the information at issue and why disclosure would reduce or eliminate that value; and

(3) Suggested ways to minimize economic harm from disclosure while still affording public access, such as isolating the specific portions of documents warranting special treatment.

(c) As part of the OFI initial determination on any FOIA request for stamped information (under §§ 1504.309 and 1504.312 of subpart C) or as part of an independent OFI decision to disclose that stamped information to the public, the OFI General Counsel or designee will make one of the following decisions on the pending petition for “business” designation:

(1) The information is not “business” within the meaning of § 1504.204(a), and the petition is therefore denied. If there is no other reason to withhold public disclosure, the OFI Freedom of Information Office will then grant the FOIA request.

(2) The information is “business” within the meaning of § 1504.204(a). The petition is therefore granted and the information is designated as “business.” However, when balancing the competing factors as to disclosure under § 1504.204(b) through (d), the public interest favors disclosure. Thus, the OFI Freedom of Information Office will then grant the FOIA request.

(3) The information is “business” within the meaning of § 1504.204(a). The petition is therefore granted, and the information is designated as “business.” When balancing the competing factors as to disclosure under § 1504.204(b) through (d) the public interest is against disclosure. Thus, the OFI Freedom of Information Officer



will then deny the FOIA request as per § 1504.312 of subpart C, subject to the petitioner's ongoing assistance to the OFI in defense of any proceeding that might thereafter be brought to compel the OFI to disclose the "business" information.

(d) Any information designated "'business' petition pending," which is released pursuant to a joint federal/state agreement or any other arrangement, shall not be released to the public by the State or any other entity receiving it unless the OFI General Counsel has made a determination otherwise.

(e) To the extent that a state agency or any other entity does not agree in advance to § 1504.208(d), the OFI will not release such information to it.

(f) The OFI Freedom of Information Officer will immediately advise the petitioner (submitter of the information at issue) of:

(1) The determinations made pursuant to either § 1504.208(c)(1) or (c)(2); and

(2) The fact that the information at issue will be publicly disclosed ten calendar days after the determination.

### Subpart C—Public Requests for Information

#### § 1504.301 Purpose and scope.

(a) This subpart describes the procedures by which records may be obtained from the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (OFI), in accord with the Freedom of Information Act, 5 U.S.C. 552. That provision of law requires that this agency, "upon any request (other than that made by another Federal agency) for records which (1) reasonably describes such records, and (2) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

(b) The procedures in this subpart do not apply to requests for records published in the FEDERAL REGISTER, for materials which are legally owned by OFI employees in their personal capacity, and for materials which are readily available to the public, such as books, journals, periodicals and other copy-

righted materials available through reference libraries, even if such materials are in OFI's possession.

#### § 1504.302 Policy on disclosure of OFI records.

(a) The OFI will make records available to the public, to the greatest extent possible in keeping with:

(1) The spirit of the Freedom of Information Act;

(2) The rights of individuals to privacy;

(3) The designation of any document as "sensitive" and "business" information which the OFI will give special treatment (pursuant to subpart B of this part); and

(4) The need to promote frank internal policy deliberations and to pursue official activities without undue disruption.

(b) All OFI records shall be available to the public upon request, unless disclosure is prohibited by court order, Executive Order, statute, provision of this subsection, or an exemption under the Freedom of Information Act.

#### § 1504.303 Partial disclosure of records.

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted.

#### § 1504.304 Existing records.

(a) The Freedom of Information Act does not require the creation of new records in response to a request, nor does it require the OFI to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. Instead, it establishes requirements for disclosure of existing records.

(b) All existing OFI records are subject to routine destruction according to standard record retention schedules.

#### § 1504.305 Where and to whom requests for OFI records should be sent.

(a) Although OFI records may be located in one or more of the OFI's branch offices, all requests for OFI records should be sent to OFI Headquarters, addressed to: Office of the

Federal Inspector, Alaska Natural Gas Transportation System Freedom of Information Officer Room 3413, Post Office Building 12th and Pennsylvania Avenue, N.W. Washington, D.C. 20044

(b) To the extent that a request is received by a branch office of the OFI, the request will not be deemed received by the OFI until received at OFI headquarters, following transmission by the branch office.

**§ 1504.306 Form of request.**

A request shall be made in writing and shall reasonably describe the records sought in a way that will permit their identification and location. If such information is available, the request should identify the subject matter of the records, the date when it was made, the person(s) or the office which made the records, the present custodian of the records, and any other information which will assist in the location of the requested records.

**§ 1504.307 Requests which do not reasonably describe records sought.**

(a) If the description of the records sought in the request is not sufficient to allow the OFI to identify and locate the requested records, the OFI will notify the requestor that the request cannot be processed further until additional information is furnished.

(b) The OFI will make reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his request.

(c) If a request is described in general terms (e.g., all records having to do with a certain area), the OFI may communicate with the requestor with a view towards reducing the administrative burden of processing a broad request and minimizing the fees payable by the requestor.

**§ 1504.308 Responsibilities of Freedom of Information Officer.**

(a) Upon receipt of a written request, the Freedom of Information Officer shall mark the request with the date of receipt, indicate the date by which a response is due, and note any other pertinent administrative information. The Freedom of Information Officer shall monitor the handling of the ini-

tial request and any appeals to ensure a timely response.

(b) The Freedom of Information Officer shall maintain a file concerning each initial request and any appeals received. This file shall contain a copy of the request, initial and appeal determinations, and other pertinent correspondence and records.

(c) The Freedom of Information Officer shall collect and maintain the information necessary to compile the reports required by 5 U.S.C. 552(d).

**§ 1504.309 Time allowed for issuance of initial determination.**

(a) Except as otherwise provided in this section, the Freedom of Information Officer shall not later than the tenth working day after the date of receipt of a request for records, issue a written determination to the requestor, stating:

(1) Which of the requested records will, and which will not, be released; and

(2) The reason for any denial of a request.

(b) The period of 10 working days shall be measured from the date the request is first received, pursuant to § 1504.305 of this part.

(c) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date when a requestor is notified by the OFI that his request does not reasonably identify the records sought and the date when the requestor furnishes a reasonable identification.

(d) There shall also be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date when a requestor is notified by the OFI that prepayment of fees is required and the date when the requestor pays, or makes suitable arrangements to pay such charges. See § 1504.318(c).

(e) The OFI may extend the basic 10-day period established under § 1504.309(a) by a period not to exceed 10 additional working days by furnishing written notice to the requestor, within the basic 10-day period, stating the reasons for such extension and the date by which the OFI expects to be able to issue a determination. The period may

#### § 1504.310

be so extended only when absolutely necessary, only for the period required, and only when one or more of the following circumstances require the extension:

(1) There is a need to search for and collect the requested records from field facilities;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request (or among two or more components of the OFI).

(f) Failure of the OFI to issue a determination within the 10-day period (together with any authorized extensions) shall constitute final agency action, which authorizes the requestor to commence an action in an appropriate Federal District Court to obtain the records.

#### § 1504.310 Records of other Federal agencies.

(a) If the release of a record would be of concern to both the OFI and another Federal agency, the record will be made available by the OFI only if the interest of OFI is the primary interest. The OFI has the primary interest in a record if it was developed pursuant to OFI regulations, directives, or request, even though the record originated outside the OFI.

(b) If the OFI does not have primary interest in the records, the request shall be referred in writing to the agency having the primary interest and the requestor will be so notified.

#### § 1504.311 Records obtained from the public; notice to the donor.

(a) If a requested record was obtained by the OFI from a person or entity outside the Government, the OFI official responsible for processing the request shall, before making a decision on the request and when it is administratively feasible to do so, seek the views of that person or entity in writing on whether the record should be released.

(b) For "sensitive" or "business" information, notice to the entity provid-

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ing the information is required and governed by subpart B of this part.

#### § 1504.312 Initial denial of a request.

(a) An initial denial of a request may be issued only for one or more of the following reasons:

(1) The record requested is not known to exist;

(2) The record is not in the OFI's possession;

(3) A statutory provision, a provision of this part, a court order, or an Executive Order requires that the information not be disclosed;

(4) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b), and the OFI has decided that the public interest would not be served by disclosure; or

(5) The record is believed to exist in OFI's possession but has not yet been located (see § 1504.312(e)).

(b) Each initial determination to deny a request shall be written, signed, and dated, and it shall state the basis for denial of a record or any part of a record.

(c) The written denial of a request shall include the name and title of the person(s) participating in a decision to deny that request.

(d) The denial shall state the administrative procedure for appealing a determination against releasing any record or part of a record.

(e) When a request must be denied because the record has not yet been located (although it is believed to exist in OFI's possession), the OFI office responsible for maintaining the record shall both continue to search diligently (until it is located or it appears that the record does not exist or is not in OFI's possession), and also periodically inform the requestor of the office's progress.

#### § 1504.313 Appeal from an initial denial.

(a) Any person whose request has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 1504.305.

(b) An appeal should be mailed no later than 30 calendar days after the date the requestor received the initial determination denying the request. An

untimely appeal may be treated either as a timely appeal or as a new request, at the option of the Freedom of Information Officer.

(c) The appeal letter shall contain the date of the initial determination, and the name and address of the person who issued the initial denial. The appeal letter shall also indicate which of the records, to which access was denied, are the subject of the appeal.

**§ 1504.314 Appeal determination.**

(a) The Federal Inspector will make one of the following legal determinations in connection with every appeal from the initial denial of a request for an existing, located record:

- (1) The record must be disclosed;
- (2) The record must not be disclosed, because a statute or a provision of this part so requires; or
- (3) The record is exempt from mandatory disclosure but legally may be disclosed as a matter of OFI discretion.

(b) The Federal Inspector may decide to delegate his authority over the appeal process.

**§ 1504.315 Contents of determination denying appeal.**

A determination denying an appeal from an initial denial shall contain the following:

- (a) It shall be in writing;
- (b) It shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record;
- (c) It shall state the reason(s) for denial of the appeal;
- (d) It shall also state the name and position of the OFI officer or employee who made the decision that the appeal be denied; and
- (e) It shall further state that the person whose request was denied may obtain judicial review of the denial by complaint filed with the District Court of the United States in the District in which the complainant resides, in which the OFI records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

**§ 1504.316 Time allowed for issuance of appeal determination.**

(a) Except as otherwise provided in this section, the Federal Inspector shall—no later than the twentieth

working day after the date of receipt by the Freedom of Information Officer at OFI Headquarters of an appeal from an initial denial of a request for records—issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.

(b) The period of 20 working days shall be measured from the date when an appeal is first received by the Freedom of Information Officer at OFI Headquarters.

(c) The Federal Inspector may extend the basic 20-day period established under § 1504.316(a) by a period not to exceed 10 additional working days, by furnishing written notice to the requestor within the basic 20-day period, stating the reasons for such extension and the date by which the Federal Inspector expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following circumstances require the extension:

(1) There is a need to search for and collect the records from field facilities or other establishments that are separate from the office processing the appeal;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the OFI.

**§ 1504.317 Exemption categories.**

(a) 5 U.S.C. 552(b) establishes nine exclusive categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No request under 5 U.S.C. 552 for an existing, located record in the OFI's possession shall be denied by any OFI office or employee, unless the record contains (or its disclosure would reveal) matters which are:

- (1) Specifically authorized under criteria established by an Executive Order

to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order (See subpart B of this part);

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than 5 U.S.C. 552(b): *Provided*, that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential (See subpart B of this part);

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party, other than an agency, in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The fact that the applicability of an exemption permits the withholding of a requested record (or portion thereof) does not necessarily mean that the record must or should be withheld.

#### § 1504.318 Fees; payment; waiver.

(a) *Fee schedule.* Fees will be charged requestors for searching for and reproducing requested records, in accordance with the following schedule: Record search time (OFI employees), \$5.00 per half hour; computer programming time (OFI employees), \$16.00 per half hour; reproduction of documents (paper copy of original), \$0.20 per page; and other costs of searching for or duplicating records (including such items as: computer system time; contractor computer programming time; reproduction of photographs, microforms, or magnetic tape; computer printouts; and transportation of records), actual direct cost to the OFI.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the order of the “U.S. Treasury” and shall be addressed to: Office of the Federal Inspector, Alaska Natural Gas Transportation System, Division of Financial Management, Room 1409, Post Office Building, 12th & Pennsylvania Ave. NW., Washington, D.C. 20044.

(c) *Prepayment or assurance of payment.* If the OFI determines or estimates that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed \$25.00, OFI need not search for, duplicate, or disclose records in response to any request by that requestor until the requestor pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this section. (See § 1504.309(d)). In such a case, the OFI office shall promptly inform the requestor (by telephone, if practicable) of the need to make payment or arrangements to pay.

(d) *Reduction or waiver of fee.* The fee chargeable under this section may be reduced or waived by the OFI, if the public interest would be served. A request for reduction or waiver of fees

should be addressed to the OFI Freedom of Information Officer.

(e) The OFI Freedom of Information Officer shall maintain a record of all fees charged requestors for searching for and reproducing requested records under this section. If, after the end of 60 calendar days from the date on which request for payment was made, the requestor has not submitted payment to the OFI Freedom of Information Officer, the Freedom of Information Officer shall place the requestor's name on a delinquent list. If a requestor whose name appears on the delinquent list makes another request under this part, the OFI Freedom of Information Officer shall inform the requestor that the OFI will not process the request until the requestor submits payment of the overdue fee from the earlier request and prepayment of the fee for the current request may be required.

## **PART 1506—EMPLOYEE STANDARDS OF CONDUCT**

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